

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #8	CCRB Case #: 201800460	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 01/14/2018 2:00 PM	Location of Incident: [REDACTED]	Precinct: 48	18 Mo. SOL 7/14/2019	EO SOL 7/14/2019	
Date/Time CV Reported Sun, 01/14/2018 3:00 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 01/18/2018 11:14 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Miguel Donovan	27770	950341	048 PCT
2. POF Sandra Martinez	04343	955139	048 PCT
3. POM Ariel Mallol	04008	960857	048 PCT
4. SGT Oliver Castillo	4106	946838	048 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Richard Mcknight	07955	955170	048 PCT
2. POM Andy Rollins	10169	944948	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Miguel Donovan	Discourtesy: At E. 185th Street and Washington Avenue in the Bronx, Police Officer Miguel Donovan spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Miguel Donovan	Abuse: At E. 185th Street and Washington Avenue in the Bronx, Police Officer Miguel Donovan stopped § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Miguel Donovan	Force: At E. 185th Street and Washington Avenue in the Bronx, Police Officer Miguel Donovan used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
D.POM Miguel Donovan	Off. Language: At E. 185th Street and Washington Avenue in the Bronx, Police Officer Miguel Donovan made remarks to § 87(2)(b) [REDACTED] based upon gender.	[REDACTED]
E.POM Miguel Donovan	Force: At the 48th Precinct Stationhouse in the Bronx, Police Officer Miguel Donovan used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
F.POF Sandra Martinez	Force: At the 48th Precinct Stationhouse in the Bronx, Police Officer Sandra Martinez used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
G.SGT Oliver Castillo	Abuse: At the 48th Precinct stationhouse in the Bronx, Sergeant Oliver Castillo did not obtain medical treatment for § 87(2)(b) [REDACTED]	[REDACTED]
H.POM Ariel Mallol	Abuse: At the 48th Precinct stationhouse in the Bronx, Police Officer Ariel Mallol did not obtain medical treatment for § 87(2)(b) [REDACTED]	[REDACTED]

## Case Summary

The CCRB received the following complaint from IAB on January 18, 2018, filed by reporting non-witness § 87(2)(b) on behalf of her daughter § 87(2)(b)

On January 14, 2018, 2:00 pm, at E. 185th Street and Washington Avenue, § 87(2)(b) and PO Miguel Donovan (of the 48<sup>th</sup> precinct) happened to cross East 185<sup>th</sup> Street at the same exact moment when § 87(2)(b) as she passed by PO Donovan, accidentally brushed against the side of his body. § 87(2)(b) alleged the following. PO Donovan immediately turned around and allegedly yelled “why the fuck did you bump into me,” as § 87(2)(b) kept walking, not fully realizing that he was addressing her. (**Allegation A: Discourtesy – Word:** § 87(2)(g)) PO Donovan then approached § 87(2)(b) from behind without warning, grabbed her by her hair, and slammed her against a parked vehicle. (**Allegation B: Abuse – Stop:** § 87(2)(g), **Allegation C: Physical Force:** § 87(2)(g)) Calling her a “bitch,” he proceeded to handcuff § 87(2)(b) and had her removed to the 48<sup>th</sup> Precinct stationhouse. (**Allegation D: Offensive Language – Gender:** § 87(2)(g)) At the parking lot there, PO Donovan and his partner PO Sandra Martinez pulled § 87(2)(b) out of the RMP and to the ground, and then dragged her into the stationhouse. (**Allegations E, F: Force:** § 87(2)(g)) While inside, Sgt. Oliver Castillo and PO Ariel Mallol (also of the 48<sup>th</sup> Precinct) allegedly refused to obtain medical treatment for § 87(2)(b) (**Allegations G, H: Abuse – Refusal to obtain medical treatment:** § 87(2)(g)) § 87(2)(b) was released with a disorderly conduct summons which was ultimately dismissed. Shortly after being released, she sought medical treatment at § 87(2)(b) for injuries she allegedly sustained while in custody. There is no video footage of the incident.

**Allegation A: At E. 185th Street and Washington Avenue in the Bronx, Police Officer Miguel Donovan spoke discourteously to § 87(2)(b)**

**Allegation B: At E. 185th Street and Washington Avenue in the Bronx, Police Officer Miguel Donovan stopped § 87(2)(b)**

**Allegation C: At E. 185th Street and Washington Avenue in the Bronx, Police Officer Miguel Donovan used physical force against § 87(2)(b)**

**Allegation D: At E. 185th Street and Washington Avenue in the Bronx, Police Officer Miguel Donovan made remarks to § 87(2)(b) based upon gender.**

**Allegation E: At the 48th Precinct Stationhouse in the Bronx, Police Officer Miguel Donovan used physical force against § 87(2)(b)**

**Allegation F: At the 48th Precinct Stationhouse in the Bronx, Police Officer Sandra Martinez used physical force against § 87(2)(b)**

It is undisputed that PO Donovan stopped and then arrested § 87(2)(b) Why and how he did so is in dispute.

On January 14, 2018, at approximately 3:00 pm, soon after § 87(2)(b), § 87(2)(b) (§ 87(2)(b) old at the time of the incident) was at the corner of East 185th Street and Washington Avenue, where many officers had just made an arrest. After briefly observing the activity, § 87(2)(b) began walking to her house § 87(2)(b). As § 87(2)(b) crossed over to the other side of the street, she passed a plainclothes

officer crossing in the other direction, identified by the investigation as PO Miguel Donovan. When § 87(2)(b) passed PO Miguel Donovan, she accidentally brushed the side of his body, possibly making contact with the radio on his belt. Barely aware of the contact, § 87(2)(b) kept walking and did not immediately realize she was being addressed when PO Donovan yelled “why the fuck did you bump me?” A moment later, PO Donovan came at her from behind without warning, grabbed her shoulder-length hair, and slammed her against a parked vehicle, calling her a “bitch” for “bumping” into him. § 87(2)(b) was then quickly surrounded by several officers, as someone handcuffed her. Though she did not resist, PO Donovan had her held against the vehicle and continued to pull on her hair even after she was handcuffed, for about thirty seconds. (BR01)

§ 87(2)(b) was removed to the 48<sup>th</sup> Precinct stationhouse by officers identified by the investigation as PO Andy Rollins and PO Ariel Mallol. At the stationhouse parking lot, when PO Donovan told her to exit the police vehicle, § 87(2)(b) asked that someone else escort her and refused to step out until PO Donovan was replaced. However, PO Donovan opened the door, grabbed her by her sweater, and pulled her out and to the ground, causing her to land on her back and wrist. PO Donovan then dragged her into the stationhouse. (BR01)

As addressed later in **Allegations G and H**, § 87(2)(b) alleged that she was refused medical treatment while in custody. Immediately after she was released, while still outside the stationhouse with her mother, § 87(2)(b) called 911 for an ambulance and reported that she was assaulted by an officer. EMTs transported § 87(2)(b) to § 87(2)(b) at about 3:00 pm, noting in their report that she was “visibly upset and crying” about being assaulted by an officer, that her “right arm had been twisted,” that “she had been thrown against the car with chest hitting vehicle” and that she was “elbowed in back of head (sic).” At the hospital, § 87(2)(b) made the following documented statements to staff. When admitted at 3:29 pm, she stated that she was “dragged on her right arm while being arrested.” When examined at 5:29 pm, § 87(2)(b) told a physician she had shoulder pain and a headache because an officer had: “Stopped her and drag her with her hair [...] pulled her right arm up and push her onto the ground [sic].” § 87(2)(b) also stated then that she “hit her head” but denied loss of consciousness (the record is not clear if § 87(2)(b) reported hitting her head after being pushed to the ground). A physical exam concluded that § 87(2)(b) was “well appearing” but noted “tenderness on sternum, right deltoid” and a “5 cm swelling over the occipital-temporal [or rear-left] area” of her head, without hematoma [or clotted blood].” X-rays of her right shoulder and chest were “normal,” however, and found no “fracture or dislocation.” § 87(2)(b) was ultimately discharged with a final diagnosis of shoulder sprain and a prescription for acetaminophen. (BR02)

Because § 87(2)(b) alleged force in her 911 call, investigating supervisor Captain Kevin Coleman interviewed her at the hospital and summarized the unrecorded conversation in his incident report, noting that § 87(2)(b) stated: that she “brushed against [PO] Donovan,” who “then pulled her by the hair and slammed her against the RMP...”; and that he “seized her again by the hair and pulled her from the RMP when they arrived at the stationhouse” where “she hit her head on the RMP and was dragged along the ground.” (BR03) Captain Coleman also took five photographs of § 87(2)(b)’s alleged injuries (see BR04): one showing an unspecified area of her scalp, which he captioned as “small scratch to head”; one of her upturned palms, captioned

as “no visible injury”; one of an arm, captioned “swelling to arm, not visible”; and two showing her in full view, without visible injury.

PO Donovan was in plainclothes working Anti-Crime that day with PO Sandra Martinez, and made the following detailed memo book entries regarding the incident (BR05):

2:00 pm: While canvassing for weapon near corner of 185<sup>th</sup> St. and Washington Ave., defendant § 87(2)(b) walked right in front of me and interfered with ongoing investigation and shoulder checked me. She shoulder bumped me intentionally and then refused to stop for police. Once stopped began to resist violently. Refused to give police her hands. resisting and being verbally abusive...

2:15 pm: Arrived at stationhouse. Defendant § 87(2)(b) refused to get out of the RMP and then threw herself on the ground and caused a scene while walking outside the RMP, kicking the glass to the Pct. door. Defendant refused medical attention and never complained of any pain.

PO Donovan stated as follows. Just before the incident, he and PO Martinez had made an arrest a block away, after a brief foot chase during which their suspect had appeared to toss a firearm to the ground, prompting them to radio for back-up. Once the prisoner was secured, PO Donovan returned to the area around the corner of East 185<sup>th</sup> Street and Washington Avenue, where he thought the weapon was discarded. There, he began canvassing the street and the sidewalk, specifically checking around the vehicles parked curbside. Working in this manner, PO Donovan was on the sidewalk with his eyes on the ground, standing a few away from the rear bumper of a parked car, when § 87(2)(b) suddenly “shoulder bumped” him. PO Donovan was not sure exactly where she was coming from, but stated that § 87(2)(b) crossed the space between him and the rear bumper of the vehicle and thrust her elbow into his left upper torso, causing him to stumble backwards; without apologizing, she continued down the sidewalk. (BR06)

PO Donovan stated that he was certain § 87(2)(b) had acted intentionally: her thrust was forceful; his shield was clearly displayed; and since the space around him, whether street or sidewalk, was entirely unobstructed, she had no other reason to have come so close to him in the first place. By interrupting his search for the firearm, § 87(2)(b) had interfered with an ongoing investigation and made him fear for his safety. Because PO Donovan could not ignore this fact and resume canvassing, he followed § 87(2)(b) as she walked away, instructing her to stop. Although she had already committed the arrestable offense of Obstructing Governmental Administration, PO Donovan did not intend to arrest her at that moment; he wanted to hear her explanation first. But since § 87(2)(b) did not stop, PO Donovan grabbed her hand when he reached her and tried to handcuff her. She responded by pulling her hands away and flailing her arms, and failed to obey repeated commands to stop resisting. With the aid of several officers he could not identify – back-up units who were helping canvass – PO Donovan eventually placed § 87(2)(b) against a parked vehicle and rear-cuffed her. The struggle was only a few minutes in duration and involved no force whatsoever beyond his holding and handcuffing § 87(2)(b). PO Donovan denied pulling § 87(2)(b)'s hair slamming her against the vehicle. He also denied calling her a bitch and using other profanity in her presence. By the time she was handcuffed, PO Donovan considered § 87(2)(b) under arrest for disorderly conduct – for intentionally bumping into him and for being belligerent thereafter – and decided to remove her to the stationhouse, directing PO Mallol and PO Rollins to transport her. (BR06)

At the stationhouse parking lot, PO Donovan and PO Martinez found § 87(2)(b) refusing to exit the vehicle. After attempting to coax her out, PO Donovan and PO Martinez reached inside, grabbed her arms, and started pulling her out, at which time § 87(2)(b) became compliant and exited the vehicle herself. But as soon as § 87(2)(b) was outside, she dropped herself to the ground by letting her body go limp, landing on her rear. PO Donovan and PO Martinez were able to pull her up without issue, however, and though she remained uncooperative as they walked her into the stationhouse, the officers never dragged her along the ground as alleged. PO Donovan denied doing anything to cause § 87(2)(b) to fall to the ground outside the RMP. (BR06)

PO Donovan stated that he prepared a TRI after releasing § 87(2)(b) with a disorderly conduct summons because his supervisor Sgt. Oliver Castillo told him to, after being advised that § 87(2)(b) had subsequently alleged sustaining injuries in custody. PO Donovan reviewed the TRI and explained that he did not enter a selection under “Force Used Against MOS” because what § 87(2)(b) did – bumping into him with the thrust of her elbow – was not represented in any of the available options; he did not select the available “Push” option because what § 87(2)(b) did could not be characterized as a push per se. PO Donovan said he did not enter a selection under “Force Used by MOS” because no force was used on § 87(2)(b) beyond holding and handcuffing her. (BR07) In the disorderly conduct summons he issued to § 87(2)(b) (citing New York Penal Law 240.20-[1]), PO Donovan wrote that § 87(2)(b) “intended with injury and pushed with a shoulder bump. Was positive with force and verbally abusive [sic].” (BR14)

PO Martinez, in her memo book and in the statement she provided, was broadly consistent with PO Donovan’s account of the incident, and said she observed much of what happened from her position at the corner of East 185<sup>th</sup> Street and Washington Avenue. While she was unable to describe the specifics of § 87(2)(b)’s initial encounter with PO Donovan, or set out the subsequent sequence of actions that led to § 87(2)(b) being handcuffed, she said the alleged force at the scene never occurred. Her account of § 87(2)(b) dropping to the ground outside the RMP was also consistent with PO Donovan’s. (BR08-BR09)

The investigation also interviewed PO Ariel Mallol and PO Andy Rollins, who transported § 87(2)(b) to the stationhouse, and Sgt. Oliver Castillo and PO Richard McKnight, who responded to the first incident location as back-up. All four officers stated that § 87(2)(b) was already handcuffed when they reached the scene, and none observed the alleged force or heard any discourteous or offensive language. Regarding § 87(2)(b) removal from the RMP at the stationhouse parking lot, PO Mallol’s account was consistent with the subject officers’, while PO Rollins recalled little about the incident beyond transporting § 87(2)(b) from the scene to the stationhouse. (BR10-BR13)

A police officer may stop and detain a person in a public place when he entertains a reasonable suspicion that the person has committed, is committing or is about to commit a crime. (People v DeBour, 40 N.Y.2d 210; BR19) Under N.Y. Penal Law §240.20(1), a person “is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, engages in fighting or in violent, tumultuous or threatening behavior.” (BR20)

§ 87(2)(g)

§ 87(2)(g)

**Allegation G: Abuse – Refusal to Obtain Medical Attention: At the 48th Precinct stationhouse in the Bronx, Sergeant Oliver Castillo did not obtain medical treatment for**

§ 87(2)(b)

**Allegation H: Abuse – Refusal to Obtain Medical Attention: At the 48th Precinct stationhouse in the Bronx, Police Officer Ariel Mallol did not obtain medical treatment for**

§ 87(2)(b)

§ 87(2)(b) stated that she requested medical treatment twice at the stationhouse, after her arm started hurting while she was in the cell. The first time, she asked an officer passing by the holding area, who she described as a heavy-set Hispanic male, whose non-standard uniform color she could not describe. The officer told § 87(2)(b) that he would return to her in ten minutes, but never came back to assist. A little later, § 87(2)(b) was let out of the cell and escorted to the front desk by the officer who had driven her to the stationhouse – a 5’6” tall, skinny, uniformed Hispanic male. When § 87(2)(b) told him she wanted to go to the hospital, the officer said: You are going home, don’t make it a bigger deal than what it is.” After a desk officer handed § 87(2)(b) the disorderly conduct summons, and released her to her mother, § 87(2)(b) went outside and called 911 for an ambulance. As § 87(2)(b) and her mother waited for the ambulance across the street, they were approached by the heavy-set officer who had not helped

her earlier. When he asked what was wrong and § 87(2)(b) said that she was injured, the officer told § 87(2)(b)'s mother she had refused medical treatment while in custody. (BR01)

PO Donovan, a Hispanic male standing 6'1" tall, 250 pounds, stated that he was the one who escorted § 87(2)(b) out of the cell and released her with the summons. PO Donovan never saw any injuries on § 87(2)(b) and she never expressed anything to suggest that she was in pain. § 87(2)(b) had refused medical attention when she was first brought into the stationhouse and never requested otherwise before or after. About 15 minutes after § 87(2)(b) left the stationhouse, PO Donovan was notified by someone at desk that § 87(2)(b) was still outside the stationhouse alleging she was injured by an officer, because of which Sgt. Castillo notified IAB and had him prepare a TRI report. (BR06)

Sgt. Castillo, a Hispanic male standing 5'9" tall, 225 pounds, stated that when he returned to the stationhouse after responding to E. 185<sup>th</sup> Street, § 87(2)(b) was about to be lodged by PO Donovan. While he did not interact with her, she appeared normal physically and presented no visible injuries, and he was never made aware of any force used on her. About 30 minutes after § 87(2)(b) was released, Sgt. Castillo was still at the stationhouse when he was notified by someone at the desk that § 87(2)(b) had called 911 from outside the stationhouse to report that an officer had assaulted her. Sgt. Castillo went out and found § 87(2)(b) with her mother, now alleging for the first time that officers had injured her earlier. § 87(2)(b) did not state that anyone had refused to obtain medical treatment for her. Though Sgt. Castillo still saw no injuries on her he notified IAB anyway. (BR12)

PO Mallol, a Hispanic male standing 5'7" tall, 160 pounds, and in uniform for the incident, acknowledged that he drove § 87(2)(b) to the stationhouse and witnessed her removal from his vehicle, but denied being in the stationhouse while she was in custody or interacting with her during that time. PO Mallol did recall seeing any injuries on § 87(2)(b) at any point, and did not recall her requesting medical treatment. (BR10)

PO Rollins, a Hispanic male standing 5'9" tall, 220 pounds, and in uniform for the incident, recalled nothing beyond transporting § 87(2)(b) to the stationhouse. He did not recall interacting with § 87(2)(b). He did not recall seeing any injuries on her, and did not recall her requesting medical treatment. (BR11)

The command log shows that § 87(2)(b) was released at 2:40 pm with a C-summons; a notation in the margin notes "no injuries to defendant as she left [stationhouse]." (BR15) Additionally, all the officers' memo books noted expressly that § 87(2)(b) never requested medical attention while in custody. (BR05, BR08, BR16-BR19)

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been a party.
- PO Donovan has been a member of service for 7 years and has been a subject in 8 CCRB complaints and CCRB complaints and 20 allegations, of which 2 were substantiated:
  - #201301780 involved a substantiated frisk allegation. The Board recommended Charges and the NYPD imposed Instructions.
  - #201508223 involved a substantiated physical force allegation. The Board recommended Command Discipline B and the NYPD imposed no discipline.
  - PO Donovan's CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Martinez has been a member of service for 5 years and has been a subject in 5 CCRB complaints and 14 allegations, none of which were substantiated. PO Martinez's CCRB history does not reflect any apparent pattern pertinent to this investigation.
- Sgt. Castillo has been a member of service for 10 years and has been a subject in 3 CCRB complaints and 6 allegations, none of which were substantiated. Sgt. Castillo's CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Mallol has been a member of service for 2 years and this is the first CCRB complaint to which he has been a subject.

### **Mediation, Civil and Criminal Histories**

§ 87(2)(b) rejected mediation. Notice of claim results are pending. On March 1, 2018, the disorderly conduct summons issued to § 87(2)(b) on the incident date was dismissed. Per the Office of Court Administration, § 87(2)(b) has no criminal conviction history. (BR20)

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Squad No.: 08

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date